

POC to determine if the record in question is currently and properly classified under Executive Order 12958, and if any information contained in the record may be segregated for release to the FOIA requester. The MDO forwards the results of the declassification review to GC, in writing, along with any recommendations on whether information in the record can be reasonably segregated and released to the FOIA requester.

(d) Withholding Agency records from public release. If the requested record is not releasable because it is either currently and properly classified or falls within another FOIA exemption, GC prepares an analysis on the rationale for denying the record, prepares the initial denial letter to be sent to the FOIA requester, and forwards the materials to the Agency IDA. The Agency IDA reviews the FOIA request and rationale for withholding the record and, if he or she concurs, signs the letter prepared by GC. The letter signed by the Agency IDA advises the FOIA requester that the records requested are being withheld from release, states the amount of material withheld from release, states the FOIA exemptions supporting the denial, and provides information on appealing the decision to the Agency AA. A copy of all initial denial letters is forwarded to GC and maintained in the individual FOIA file.

(e) *Appeal rights of FOIA requesters.* (1) If a FOIA requester appeal the initial denial decision of the agency IDA, GC processes the appeal for review by the agency AA. The AA reviews the initial FOIA request, GC's analysis, and the denial decision made by the IDA. The AA has the authority to either uphold the decision made by the IDA, and withhold the requested records from release, or reverse the decision made by the IDA and release all or a portion of the records requested. GC prepares the written response to the FOIA requester for the AA's signature. If the AA makes a final determination to uphold the decision made by the agency IDA, the final Agency response includes the basis for the decision and advises the FOIA requester of the right to seek judicial review.

(2) In addition to denials of information, a FOIA requester also has a right

to appeal initial assessments made by GC regarding fee categories, fee waivers, fee estimates, requests for expedited processing, no record determinations, failure to meet the statutory time limits, or any determination found to be adverse by the requester. The authority to uphold or reverse initial assessments made by GC in these areas is the agency AA. The decision of the AA is final.

(f) *Relationship between the FOIA and the Privacy Act.* Not all requesters will be knowledgeable of the appropriate act to cite when requesting records or access to records. In some instances, either the FOIA or the Privacy Act may be cited.

(1) Both the FOIA and the Privacy Act give the right to request access to records held by Federal Agencies. Access rights under the FOIA are given to any individual, business, or organization, but the Privacy Act gives access rights only to those individuals who are the subject of the records being requested.

(2) When responding to a request for records under the Privacy Act, detailed guidance on which act to apply may be found in 32 CFR part 286 and 32 CFR part 310. Additional assistance is also available from GC.

PART 295—OFFICE OF THE INSPECTOR GENERAL, FREEDOM OF INFORMATION ACT PROGRAM

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APPENDIX A TO PART 295—FOR OFFICIAL USE ONLY (FOUO)

APPENDIX B TO PART 295—EXEMPTIONS

AUTHORITY: 5 U.S.C. 552.

SOURCE: 56 FR 49694, Oct. 1, 1991, unless otherwise noted.

§ 295.1 Purpose.

This part establishes the policy and sets forth the procedures by which the public may obtain information and

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records from the Inspector General (IG) under the Freedom on Information Act (FOIA). It implements title 5, United States Code (U.S.C.) section 552, as amended by the Freedom of Information Reform Act of 1986, 32 CFR part 285 and 32 CFR part 286.

§ 295.2 Applicability.

The provisions of this part are applicable to all components of the Office of the Inspector General (OIG) and govern the procedures by which FOIA requests for information will be processed and records may be released under the FOIA.

§ 295.3 Definition of OIG records.

(a) The products of data compilation, such as books, papers, maps, and photographs, machine readable materials or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in the OIG's possession and control at the time the FOIA request is made.

(b) The following are not included within the definition of the word "record":

(1) Objects or articles, such as structures, furniture, vehicles and equipment, whatever their historical value, or value as evidence.

(2) Administrative tools by which records are created, stored, and retrieved, if not created or used as sources of information about organizations, policies, functions, decisions, or procedures of the OIG. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium are not agency records. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software.) Exceptions to this position are outlined in § 295.4(c).

(3) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(4) Personal records of an individual not subject to agency creation or retention requirements, created and

maintained primarily for the convenience of an OIG employee, and not distributed to any other OIG employee for their official use, or otherwise disseminated for official use.

(5) Information stored within a computer for which there is no existing computer program for retrieval of the requested information.

(c) In some instances, computer software may have to be treated as an agency record and processed under the FOIA. These situations are rare, and shall be treated on a case-by-case basis. Examples of when computer software may have to be treated as an agency record are:

(1) When the data is embedded within the software and can not be extracted without the software. In this situation, both the data and the software must be reviewed for release or denial under the FOIA.

(2) Where the software itself reveals information about organizations, policies, functions, decisions, or procedures of the OIG, such as computer models used to forecast budget outlays, calculate retirement system costs, or optimization models on travel costs.

(3) See appendix B to this part for further information on release determinations of computer software.

(d) If unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials are available to the public through an established distribution system with or without charge, the provisions of 5 U.S.C. 552(a)(3) normally do not apply and they need not be processed under the FOIA. Normally, documents disclosed to the public by publication in the FEDERAL REGISTER also require no processing under the FOIA. In such cases, the OIG will direct the requester to the appropriate source to obtain the record.

§ 295.4 Other definitions.

(a) *FOIA Request.* A written request for OIG records, made by any person, including a member of the public (U.S. or foreign citizen), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes